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8 *Co-Counsel for Defendants Power
Ventures, Inc. and Steve Vachani*

9 UNITED STATES DISTRICT COURT

10 NORTHERN DISTRICT OF CALIFORNIA

11 FACEBOOK, INC.,

12 Plaintiff,

13 v.

14 POWER VENTURES, INC. d/b/a POWER.COM, a
15 California corporation; POWER VENTURES, INC.
16 a Cayman Island Corporation, STEVE VACHANI,
17 an individual; DOE 1, d/b/a POWER.COM, an
18 individual and/or business entity of unknown nature;
19 DOES 2 through 25, inclusive, individuals and/or
20 business entities of unknown nature,

21 Defendants.

Case No. 5:08-CV-05780 JW

**BRAMSON, PLUTZIK, MAHLER &
BIRKHAUSER, LLP'S NOTICE OF
JOINDER AND JOINDER IN
BURSOR & FISHER, P.A.'S
NOTICE OF MOTION AND
MOTION TO WITHDRAW AS
COUNSEL FOR DEFENDANTS
POWER VENTURES, INC. AND
STEVE VACHANI**

Honorable Chief Judge James Ware

Date: July 9, 2012

Time: 9:00 a.m.

Dept.: Courtroom 9, 19th Floor

NOTICE OF MOTION**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE that on July 9, 2012, at 9:00 a.m., or as soon thereafter as the matter may be heard before the Honorable James Ware, United States District Judge, Courtroom 9, 19th Floor of the United States District Court for the Northern District of California, San Francisco Division, 450 Golden Gate Avenue, San Francisco, California 94102, Bramson, Plutzik, Mahler & Birkhaeuser, LLP (“BPMB”), co-counsel of record for Defendants Power Ventures, Inc. and Steve Vachani, will join, and shall and hereby does join, in the Motion of its co-counsel, Bursor & Fisher, P.A. (“Bursor”), for leave of this Court, pursuant to Local Rule 11-5(a) and in compliance with Cal. R. Prof. Conduct 3-700, to withdraw as counsel for Defendants Power Ventures, Inc. and Steve Vachani (“Defendants”).

Pursuant to Local Rule 11-5, BPMB (“Movant”) and its partner, Alan R. Plutzik (“Plutzik”) hereby notify the parties and the Court of their intent to withdraw as counsel for Defendants. Movant states the following grounds for this notice and motion: Power Ventures, Inc. and Steve Vachani have not paid Defendants’ Counsel’s outstanding invoices, as a result of which Bursor has moved to withdraw as Defendants’ Counsel. BPMB joins in that motion.

This Joinder is based on this Notice; the accompanying Memorandum of Points and Authorities and the Declaration of Alan R. Plutzik; the Notice of Motion and Motion of Bursor & Fisher, P.A., to withdraw as counsel for Defendants and the supporting Declaration of L. Timothy Fisher, filed in this action on June 4, 2012; all documents on file in this action; and such additional evidence and argument as may be presented to the Court at or prior to the hearing on Bursor’s motion or this Joinder.

1 Dated: June 8, 2012

2 BRAMSON, PLUTZIK, MAHLER &
3 BIRKHAUSER, LLP

4 By: /s/ Alan R. Plutzik
5 Alan R. Plutzik

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13 *Co-Counsel for Defendants Power*
14 *Ventures, Inc. and Steve Vachani*

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On June 4, 2012, Bursor & Fisher, P.A. (“Bursor”), filed a motion with this Court to withdraw as counsel for defendants Power Ventures, Inc., and Steve Vachani (collectively “Defendants”). Bramson, Plutzik, Mahler & Birkhaeuser (“BPMB”), co-counsel for Defendants, joins in that motion and in Bursor’s request to withdraw as counsel. There is good cause for the Court to allow BPMB to withdraw. By agreement with Defendants and Bursor, BPMB initially served as local counsel for Defendants. After Bursor opened a California office in January, 2011, BPMB ceased to play an active role in the litigation. Because Bursor’s invoices have gone unpaid, Bursor has sought leave to withdraw as counsel for Defendants. As a result of Bursor’s impending departure, BPMB must withdraw as well. Under California law, the failure to pay fees when due is an enumerated ground for withdrawing as counsel.

BPMB’s withdrawal will cause no harm to Defendants, as summary judgment has already been granted in favor of Plaintiff Facebook, Inc. (“Facebook”). Furthermore, BPMB’s withdrawal will not unduly delay resolution of the case, as all issues related to damages have been fully briefed. Finally, BPMB has complied with all local rules relevant to withdrawing as counsel and has filed this Motion as soon as practicable upon learning the facts giving rise to it and informing Defendants and Plaintiff’s counsel. BPMB, therefore, joins in Bursor’s Motion to Withdraw and requests that the Court allow BPMB, as well as Bursor, to withdraw.

II. DEFENDANTS’ INABILITY TO PAY THEIR ATTORNEYS’ FEES WARRANT COUNSEL’S WITHDRAWAL

Under this District’s Local Rules, “Counsel may not withdraw from an action until relieved by order of the Court after written notice has been given reasonably in advance to the client and to all other parties who have appeared in the case.” N.D. Cal. L. R. 11-5(a); *Ortega v. Giammalvo*, 2010 WL 3489396 at *1 (N.D. Cal. Sept. 2, 2010). In making their determination, courts will typically look to “applicable state rules to determine whether adequate grounds exist to excuse counsel from further representation.” *Board of Trustees v. Harrison*, 2010 WL 1753275 at *1 (N.D. Cal. Apr. 22,

2011). The California Rules of Professional Conduct provide that an attorney may withdraw as counsel under California law if the client: (1) “renders it unreasonably difficult for the member to carry out the employment effectively,” or (2) “breaches an agreement or obligation to the member as to expenses or fees.” Cal. Rules of Professional Conduct, Rules 3-700(C)(1)(d) and (C)(1)(f).

The decision to grant or deny counsel’s motion to withdraw is within the discretion of the trial court, however there are four factors courts often weigh in exercising that discretion: “(1) the reasons why withdrawal is sought; (2) the prejudice withdrawal may cause to other litigants; (3) the harm withdrawal might cause to the administration of justice; and (4) the degree to which withdrawal will delay the resolution of the case.” *Nedbank Int’l, Ltd. v. Xero Mobile, Inc.*, 2008 WL 4814706 at *1 (C.D. Cal. Oct. 30, 2008)

In this case, all four factors support allowing BPMB to withdraw as counsel for Defendants along with Bursor. First, the reason for withdrawal is supported by California law. *See* Cal. Rules of Professional Conduct, Rule 3-700(C)(1)(f). Defendants have failed to pay their counsel’s outstanding invoices for over one year. Declaration of L. Timothy Fisher, filed June 4, 2012 (the “Fisher Decl.”), at ¶ 2-3. Refusal to pay counsel’s fees by itself warrants withdrawal. *See Board of Trustees v. Harrison*, 2011 WL 1753275 at *1 (“Defendants’ lack of cooperation and refusal to pay counsel constitutes good cause for withdrawal.”)

Second, Plaintiff will suffer no prejudice as a result of BPMB’s withdrawal. Plaintiff’s counsel was notified of this Motion. Fisher Decl. ¶ 4. Plaintiff’s non-opposition to this motion shows that there will be no harm to its interests.

Third, the withdrawal will cause no harm to the administration of justice. Summary judgment has already been granted in favor of Plaintiff, and the issues regarding damages have been fully briefed pursuant to the Court’s request. Additionally, BPMB has complied with all local rules relevant to withdrawing as counsel, and has informed both the clients and Plaintiff’s counsel of their intention to withdraw. *See* the accompanying Declaration of Alan R. Plutzik (the “Plutzik Decl.”), at ¶¶ 2-3, 6.

Fourth, and finally, withdrawal will not delay resolution of the case, as the case has already been resolved. All legal issues have been decided, with summary judgment having been granted in favor of Plaintiff. The issue of damages has been fully briefed, with no further action required on the part of Counsel. Furthermore, Counsel filed this Motion as soon as practicable upon learning the facts giving rise to it. Plutzik Decl. ¶ 5.

III. CONCLUSION

For the foregoing reasons, and for good cause shown, BPMB joins in Bursor's Motion to Withdraw as Counsel and respectfully requests that the Court permit it to withdraw as counsel along with Bursor.

Dated: June 8, 2012

BRAMSON, PLUTZIK, MAHLER &
BIRKHAUSER, LLP

By: /s/ Alan R. Plutzik
Alan R. Plutzik

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